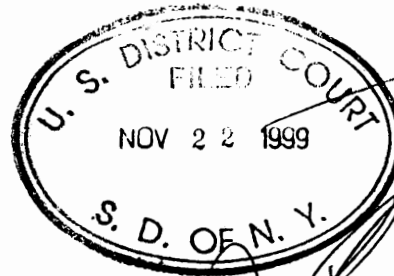


SCHILLING

MARY JO WHITE
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

CIPRIANI FIFTH AVENUE, LLC,
RCPI TRUST, and B.E. ROCK CORP.,

Defendants.

CONSENT DECREE

99 Civ. 11496 AGS

99,2802

WHEREAS, Plaintiff United States of America (the

"Government") commenced this action to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA") against defendants Cipriani Fifth Avenue, LLP ("Cipriani"), RCPI Trust ("RCPI"), and B.E. Rock Corp. ("B.E. Rock") (collectively, "defendants"), pursuant to 42 U.S.C. § 12188(b)(1)(B), with respect to the Rainbow Complex, a complex of restaurants, bars, function rooms, and other establishments located at 30 Rockefeller Plaza in New York, New York (the "Rainbow Complex"); and

WHEREAS, the complaint alleges that defendants violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. Pt. 36, by, among other things, failing to remove architectural barriers to access

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where it is readily achievable to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; failing to make alterations such that the altered portions of the Rainbow Complex are accessible to the maximum extent feasible; failing to make the paths of travel to the altered primary function areas, and the restrooms and telephones serving altered primary function areas, accessible; and failing to make reasonable modifications to policies, practices and procedures to make the goods and services offered at the Rainbow Complex accessible to individuals with disabilities; and

WHEREAS, the commencement of this action by the United States follows an investigation by the United States Department of Justice into a complaint filed by the Eastern Paralyzed Veterans Association, a non-profit veterans service organization advocating the rights of persons with disabilities, which had alleged that the Rainbow Complex violated the ADA; and

WHEREAS, the defendants deny liability for any violation of Title III of the ADA with respect to the Rainbow Complex, and have consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law and without this Consent Decree constituting an admission by defendants with respect to any such issues; and

WHEREAS, since assuming possession of the Rainbow Complex on January 1, 1999, defendant Cipriani has undertaken renovations to the Rainbow Complex; and

WHEREAS, the United States and defendants agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and 42 U.S.C. §§ 1331 and 1345.

APPLICATION AND PARTIES BOUND

2. This Consent Decree applies to, and is binding upon, the Government and the defendants. This Consent Decree also applies to and binds the successors-in-interest and assigns of defendants Cipriani and RCPI, each of which shall have a duty to notify its successors-in-interest and assigns of this Consent Decree. The undersigned representatives of defendants certify that they are authorized by defendants to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind defendants to it.

3. The Rainbow Complex and each of the establishments located within the Rainbow Complex is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because the operations of each of them affects commerce and because, among other things, each is "a restaurant, bar, or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B).

Defendant Cipriani is a public accommodation within the meaning of Title III because it leases and operates the Rainbow Complex. Defendant RCPI is a public accommodation within the meaning of Title III because it owns the Rainbow Complex and leases the Rainbow Complex to Cipriani. Defendant B.E. Rock was a public accommodation within the meaning of Title III during the period from 1987 until 1998 when it leased and operated the Rainbow Complex. 42 U.S.C. § 12181(7); 12182; 28 C.F.R. § 36.104.

FACILITIES COVERED BY THIS CONSENT DECREE

4. This Consent Decree shall apply to each and every restaurant, bar, function room, and establishment serving food or drink located on the 65th floor of 30 Rockefeller Plaza, including the rooms and establishments presently or formerly known as the Rainbow Room, the Promenade Bar, the Rainbow Pavilion, Rainbow and Stars, and the Park Suite. This Consent Decree shall also apply to the public restrooms serving or capable of serving the establishments located on the 65th floor, including the men's restroom located on the 66th floor, the women's restroom located on the 66th floor, the men's restroom located on the 64th floor, the women's restroom located on the 65th floor, the women's restroom located on the 64th floor, and the performers' dressing room located on the 65th floor. This Consent Decree shall also apply to the elevators, public telephones and drinking fountains, if any, serving the rooms and establishments located on the 65th floor.

5. With the exception of the two restrooms on the

64th floor serving the 65th floor, this Consent Decree shall not apply to those facilities of the Rainbow Complex located exclusively on the 64th floor. With the exception of the men's and women's restrooms on the 66th floor serving the 65th floor, this Consent Decree shall not apply to those facilities of the Rainbow Complex located on the 66th floor. Defendants Cipriani and RCPI acknowledge their obligation to ensure that all places of public accommodation within the Rainbow Complex, including those facilities and establishments not covered by this Consent Decree, comply with Title III.

6. This Consent Decree shall not absolve defendants Cipriani or RCPI or any other person or entity (other than defendant B.E. Rock) from liability for any violation or potential violation of the ADA concerning any facility or establishment within the Rainbow Complex not expressly included within the coverage of this Consent Decree. Nothing in this Consent Decree shall preclude the United States from commencing or continuing any investigation with respect to any facility or establishment not expressly included within the coverage of this Consent Decree, and nothing in this Consent Decree shall preclude the United States from commencing a civil action against any person or entity (other than defendant B.E. Rock) with respect to any facility or establishment of the Rainbow Complex not covered by this Consent Decree.

INJUNCTIVE RELIEF

A. BARRIERS TO ACCESS

7. During the course of its investigation of the Rainbow Complex, the Government identified a number of barriers to access to and within the Rainbow Complex, barriers which existed prior to January 1, 1999, and which are described more fully below. Except as otherwise provided in paragraph 16(c) below, defendants Cipriani and RCPI shall remedy the barriers to access identified in this Consent Decree in the manner set forth below within six months after the date of entry of this Consent Decree. In addition, except as otherwise provided in paragraph 16(c) below, any renovations or alterations to the Rainbow Complex commenced on or after January 1, 1999, including without limitation the addition of any new bar, restaurant, function room, restroom, drinking fountain, or public telephone, shall be made in accordance with the ADA Accessibility Guidelines for Buildings and Facilities, 28 C.F.R. Pt. 36, App. A (the "Standards").

LOBBY ENTRANCE

8. Barrier Description. The amount of force required to stop the closing of the automatic lobby doors on the 65th floor exceeds the maximum force permissible under the Standards.

9. Consent Decree Requirement. Defendants shall adjust the force necessary to stop the closing of the doors to comply with section 4.13.12 of the Standards.

RAINBOW ROOM

10. Barrier Description Number 1. There exists no accessible route into the Rainbow Room. The main entrance stairway to the Rainbow Room, which requires patrons to ascend and descend sets of stairs, constitutes a barrier to accessing the Rainbow Room to persons with disabilities.

11. Consent Decree Requirements.

(a) Defendants shall construct an alternate and accessible public entrance to the Rainbow Room immediately adjacent to the main entrance stairway. As used in this paragraph and throughout this Consent Decree, the term "accessible" describes a site, building, or facility, or a portion thereof, that complies with the Standards. The new alternate and accessible route required by this paragraph shall comply in all respects with section 4.3 of the Standards. Defendants shall post directional signage complying with section 4.30.1, 4.30.2, 4.30.3, and 4.30.5 of the Standards indicating the location of the alternate and accessible public entrance.

(b) The decor and lighting provided in and throughout the alternate and accessible public entrance to the Rainbow Room shall match the decor and lighting of the surrounding public areas of the restaurant.

(c) No part of this alternate and accessible public entrance to the Rainbow Room shall proceed through a kitchen, pantry, or other service area, and under no circumstances shall defendants require individuals with disabilities to enter or exit

the Rainbow Room by way of a kitchen, pantry or other service area.

(d) Use of the alternate and accessible public entrance to the Rainbow Room shall be available to all members of the general public.

12. Defendants shall ensure that the seating layout within the Rainbow Room at all times allows for an accessible route measuring at least 36 inches connecting accessible elements and spaces within the Rainbow Room in accordance with section 4.1.3(1) of the Standards. At least five percent of the tables within the Rainbow Room shall meet the dimensions of section 4.32 of the Standards.

13. Barrier Description Number 2. The amount of force required to push or pull open the doors serving the Rainbow Room exceeds the maximum force permissible under section 4.13 of the Standards.

14. Consent Decree Requirement. Defendants shall adjust the force necessary to operate all doors serving the Rainbow Room to comply with section 4.13.11 of the Standards.

PROMENADE BAR/SOUTH BAR

15. Barrier Description Number 1. There exists no accessible route to any seating within the Promenade Bar. All seating within the bar is located on raised platforms which are not accessible. The steps that connect the various levels of the Promenade Bar do not comply with the Standards. The steps have uneven risers and non-compliant handrails.

16. Consent Decree Requirements.

(a) Defendants shall provide an accessible route into the Promenade Bar. Defendants shall also provide an accessible route from all areas within the Promenade Bar to the restrooms and telephones serving the Promenade Bar. If defendants provide more than one public entrance to the Promenade Bar from the lobby area and corridor, the main public entrance shall be made accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs.

(b) Defendants shall remove existing railings and platforms and install permanent ramps and handrails that comply with the Standards. Defendants shall ensure that all public areas of the Promenade Bar, including areas located upon a raised platform, are accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs.

(c) All seating areas within the Promenade Bar that are located upon a raised platform shall be made accessible by means of at least one ramp that complies, to the maximum extent technically feasible, with Section 4.8 of the Standards. Defendants shall install the compliant ramp required by this paragraph within eighteen months after the date of entry of this Consent Decree. If defendants operate the Promenade Bar and the Rainbow Pavilion as a single, unified restaurant, the compliant ramp required to be installed by this paragraph may be located at the western end of the Promenade Bar (i.e., connecting the Promenade Bar to the Rainbow Pavilion) provided that defendants

also maintain an additional, permanent ramp (which need not conform to sections 4.8.2 or 4.8.4 of the Standards, but which nevertheless must measure at least seven feet in length and provide a minimum clear width of at least 36 inches) with compliant handrails at the eastern end of the Promenade Bar (i.e., connecting the eastern, sunken area of the Promenade Bar to the western, raised area of the Promenade Bar).

17. Barrier Description Number 2. No accessible seating is provided in the section of the Promenade Bar reserved for non-smoking.

18. Consent Decree Requirement. If defendants designate separate areas of any restaurant or bar within the Rainbow Complex for smoking and non-smoking patrons, defendants shall distribute accessible tables in both smoking and non-smoking areas of such restaurant or bar in proportion to the number of accessible tables provided throughout that restaurant or bar.

19. Barrier Description Number 3. Fixed tables within the Promenade Bar are not accessible and the aisle to the fixed seating area within the Promenade Bar is impermissibly narrow.

20. Consent Decree Requirement. Defendants shall replace the fixed seating with removable seating. Defendants shall ensure that the seating layout at all times allows for an accessible route measuring at least 36 inches connecting accessible elements and spaces within the Promenade Bar in accordance with section 4.1.3(1) of the Standards. At least five

percent of the tables within the Promenade Bar shall meet the dimensions of section 4.32 of the Standards. Accessible tables shall be distributed throughout the Promenade Bar to ensure that seating for individuals with disabilities, including individuals who use wheelchairs, is available in all sections and levels of the Promenade Bar.

21. Barrier Description Number 4. The counter bar serving the Promenade Bar does not comply with the Standards. While the Promenade Bar provides counter service to customers seated on stools and standing at the bar, no portion of the counter is accessible.

22. Consent Decree Requirement. Defendants shall either (a) modify the bar counter to provide a portion which is 60 inches in length in compliance with section 4.32 of the Standards or (b) provide service at accessible tables located within the same area. Solely for purposes of this Consent Decree, and with respect to the Rainbow Complex only (including any additional counter bars that may be installed within the Rainbow Complex in the future), accessible tables shall not be considered located within the same area as any counter bar unless the tables are located within 20 feet of the counter bar and have an unobstructed view of the counter bar.

THE RAINBOW PAVILION

23. Barrier Description Number 1. The route leading into the Rainbow Pavilion from the Park Suite corridor is not accessible. Stairs connect levels not served by a ramp or lift,

and the stairs leading to the Rainbow Pavilion from the Park Suite corridor do not comply with section 4.9 of the Standards.

24. Consent Decree Requirement. Defendants shall modify the Rainbow Pavilion by removing all non-compliant stairs leading to the entrance of the Rainbow Pavilion and installing permanent ramps that comply with the Standards.

25. Barrier Description Number 2. The leading edge of the food service shelf in the Rainbow Pavilion measures more than 27 inches above the finished floor and protrudes more than four inches into the circulation path.

26. Consent Decree Requirement. Defendants shall either (a) modify the food service shelf to comply with section 4.4.1 of the Standards; (b) provide a cane-detection barrier beneath the food-service shelf; or (c) remove the food service shelf.

RAINBOW AND STARS

27. Barrier Description. There exists no accessible route into and throughout Rainbow and Stars. The entry foyer contains steps a total of 12 inches high. In addition, Rainbow and Stars contains multiple dining levels that are not served by a ramp or lift, and the stairs leading to those dining levels do not comply with section 4.9 of the Standards.

28. Consent Decree Requirement. Defendants shall modify Rainbow and Stars to create an accessible route into the facility and an accessible route from within the facility to the restrooms and telephones serving the facility. Defendants shall

modify Rainbow and Stars to remove all raised dining platforms.

THE PARK SUITE

29. Barrier Description. The leading edge of the shelf in the Park Suite measures more than 27 inches above the finished floor and protrudes more than four inches into the circulation path.

30. Consent Decree Requirement. Defendants shall either (a) modify the food-service shelf to comply with section 4.4.1 of the Standards; (b) provide a cane-detection barrier beneath the food-service shelf; or (c) remove the shelf.

66th FLOOR RESTROOMS

31. Barrier Description. There exists no accessible route into the 66th floor men's and women's restrooms. Access to the 66th floor restrooms requires individuals to ascend steep and narrow stairs. Additional barriers to access are identified on Exhibit A.

32. Consent Decree Requirements.

(a) Defendants shall construct and make available an accessible unisex restroom located on the 65th floor. The unisex restroom shall be located in the same area of the 65th floor as the entrance to the stairway leading to the 66th floor restrooms. The unisex restroom, which shall comply with section 4.22 and Figures 28, 29, 31, and 32 of the Standards, shall contain one water closet complying with section 4.16 of the Standards, and one lavatory complying with section 4.19 of the standards; and the door shall have a privacy latch. If the unisex restroom

contains a toilet stall, that stall shall be a Standard Stall that meets the specifications of Figure 30(a) of the Standards.

(b) Defendants shall post directional signage complying with sections 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7 of the Standards indicating the location of the unisex restroom. Such signage shall be posted immediately below the signage at the entrances to the stairs leading to the 66th floor restrooms, and immediately below the signage leading to the women's 65th floor restroom.

(c) Defendants shall modify the 66th floor men's restroom in the manner set forth in Exhibit A.

(d) Defendants shall modify the 66th floor women's restroom in the manner set forth in Exhibit A with respect to any barriers to access identified in items 1 through 12 of Exhibit A for the men's restroom that also exists in the 66th floor women's restroom.

(e) Defendants shall modify the 64th floor men's restroom in the manner set forth on Exhibit A. The 64th floor men's restroom shall contain at least one Standard Stall that meets the specifications of Figure 30(a) of the Standards, provided, however, that if plumbing code requirements prevent combining existing stalls to provide sufficient space for the installation of a Standard Stall in this restroom, then defendants shall (i) provide at least one 36" alternate stall that meets the specifications of Figure 30(b) of the Standards in lieu of the Standard Stall and (ii) provide directional signage

complying with the Standards indicating the location of the nearest accessible restroom.

65th FLOOR WOMEN'S RESTROOM

33. Barriers to Access. The route through the door and throughout the 65th floor women's restroom is not accessible. In addition, the 65th floor women's restroom does not provide an accessible stall. Additional barriers to access to and within the 65th floor women's restroom are identified in Exhibit A.

34. Consent Decree Requirements.

(a) Defendants shall construct and make available a unisex accessible restroom located on the 65th floor, with appropriate signage, as provided in Paragraph 32.

(b) Defendants shall modify the 65th floor women's restroom in the manner set forth in Exhibit A.

(c) Defendants shall modify the 64th floor women's restroom in the manner set forth in Exhibit A. The 64th floor women's restroom shall contain at least one Standard Stall that meets the specifications of Figure 30(a) of the Standards, provided, however, that if plumbing code requirements prevent combining existing stalls to provide sufficient space for the installation of a Standard Stall in this restroom, then defendants shall (i) provide at least one 36" alternate stall that meets the specifications of Figure 30(b) of the Standards in lieu of the Standard Stall and (ii) provide directional signage complying with the Standards indicating the location of the nearest accessible restroom.

PUBLIC TELEPHONES

35. Barriers to Access. The public telephones located on the 65th floor are not accessible to individuals with disabilities. The highest operable parts of the public telephones are out of reach; no telephone has volume control; no signage is provided depicting volume control; no text telephone device is provided; no shelf for a portable text telephone is provided; and none of the telephone booths is accessible.

36. Consent Decree Requirement. Defendants shall install at least two additional public telephone units adjacent to the two existing public telephone units on the 65th floor in accordance with section 4.1.3(17) of the Standards. At least one of the public telephone units at this location shall comply with section 4.31.2 through 4.31.8 of the Standards. In addition, at least one other public telephone unit at this location shall be equipped with a volume control. At least one text telephone shall be provided at this location, and one shelf (with outlet) capable of accommodating a text telephone shall be provided.

FIRE ALARMS

37. Barrier Description. The fire alarm system of the Rainbow Complex does not comply with the Standards.

38. Consent Decree Requirement. Defendants shall install audible and visual alarm signal appliances in all areas of the Rainbow Complex consistent with section 4.28 of the Standards.

ELEVATOR LOBBIES AND ELEVATORS

39. Barrier Description. Barriers to access to and within the elevator lobbies and elevators serving the Rainbow Complex are set forth on Exhibit B.

40. Consent Decree Requirement. Defendant RCPI shall modify the elevator lobbies and elevators serving the Rainbow Complex in the manner set forth in Exhibit B.

OUTDOOR PATIOS AND TERRACES

41. In the event that the Rainbow Complex provides public access to any outdoor patio or terrace, defendants shall provide at least one accessible route from the inside of the facility to that patio or terrace. If defendants provide goods and services on any outdoor patio or terrace, those goods and services shall be accessible to individuals with disabilities.

B. SERVICES, BENEFITS, ADVANTAGES, AND PRIVILEGES

42. Defendants Cipriani and RCPI are enjoined from discriminating against individuals on the basis of disability in the full and equal enjoyment of the goods and services of the Rainbow Complex.

43. Defendants shall provide the same services, benefits, advantages, and privileges to individuals using the alternate and accessible public entrance to the Rainbow Room as are provided to individuals using the main entrance stairs to the Rainbow Room.

44. Whenever defendants provide goods and services on raised platforms or in sunken dining areas, defendants shall

provide the same services, benefits, advantages, privileges, and decor in the dining areas not located on the raised platforms as are provided in the dining areas located on the raised platforms. As used in this paragraph, the term "services" shall include, without limitation, food, drinks, wait service, self-service, menus, menu selection, entertainment, dancing, and music.

45. Because a fixed shoe-shine station is located in the 66th floor men's restroom (and thus is not available on equal terms to individuals who cannot access that restroom because of disability), defendants shall (so long as a shoe shine service is provided in the 66th floor men's restroom) provide a comparable shoe-shine service at an alternate, accessible location on the 65th floor. Defendants shall post compliant signage in the 65th floor unisex restroom, or at another equally accessible location on the 65th floor in the same general area as the stairway leading to the 66th floor men's restroom, advising that such a service is available, upon request.

46. Within six months after the date of entry of this Consent Decree, defendants shall develop a written policy or policies for providing goods and services to individuals with disabilities at the Rainbow Complex in accordance with the requirements of Title III of the ADA. Such policy shall address, among other things, the reservation of tables, the location and distribution of accessible tables, the location of reception stations and host stations within restaurant and bar areas, the circulation path of customers, and the matters addressed in

paragraphs 43, 44, and 45 above. Defendants shall submit their written policy or policies (and any changes to such policy or policies) to the United States, through undersigned counsel, for review and approval. Upon approval by the United States, defendants shall implement the policy and shall make that policy known to all of its employees and patrons.

PENALTIES AND DAMAGES

47. Defendant B.E. Rock shall pay a total of forty thousand dollars (\$40,000.00) in full and final settlement and satisfaction of any and all claims asserted by the United States in this action for civil penalties and monetary damages, with payment to be made as follows: (A) B.E. Rock shall pay \$25,000 to the United States Department of Justice to settle the claims asserted by the United States against defendant B.E. Rock for civil penalties. Payment of this amount shall be made within sixty days after the date of entry of this Consent Decree by check payable to the United States Department of Justice. (B) B.E. Rock shall pay \$15,000 to the Eastern Paralyzed Veterans Association to settle the claims asserted by the United States against defendant B.E. Rock for monetary damages. Payment of this amount shall be made within sixty days after the date of entry of the Consent Decree by check payable to the Eastern Paralyzed Veterans Association, provided, however, that no payment shall be due to the Eastern Paralyzed Veterans Association until the Eastern Paralyzed Veterans Association has executed, and counsel for B.E. Rock has received, a release

substantially in the form attached to this Consent Decree as Exhibit C.

48. B.E. Rock denies having violated Title III of the ADA with respect to the Rainbow Complex and asserts that it has agreed to pay the amounts specified in the previous paragraph solely to resolve this matter without costly and protracted litigation.

49. Notwithstanding anything contained in this Consent Decree to the contrary, the provisions of this Consent Decree defining the scope of the facilities covered by this Consent Decree (i.e., paragraphs 4 through 6) and the provisions of this Consent Decree relating to injunctive relief (i.e., paragraphs 7 through 46) shall not apply to defendant B.E. Rock, which shall have no further or continuing obligation under this Consent Decree once payment in full of the amounts specified in paragraph 47 above has been made and received.

CERTIFICATION

50. Within six months after the date of entry of this Consent Decree, defendants Cipriani and RCPI shall submit to the Government a certification, under penalty of perjury, stating that each of them has complied with all obligations of this Consent Decree that are required to be satisfied or completed by that date. Within eighteen months after the date of entry of this Consent Decree, defendants Cipriani and RCPI shall submit to the Government a certification, under penalty of perjury, stating that the compliant ramp required to be installed by paragraph

16(c) of this Consent Decree has been installed.

RIGHT TO REVIEW COMPLIANCE

51. The United States may review compliance with this Consent Decree at any time. Upon reasonable advance notice to defendants Cipriani and RCPI (through undersigned counsel), defendants shall permit the United States and any person acting on its behalf unlimited access to the Rainbow Complex to review compliance with the ADA and this Consent Decree. If the United States believes that defendants Cipriani and/or RCPI have violated this Consent Decree or are otherwise not in full compliance with the ADA, the United States will notify these defendants in writing and seek to resolve the matter amicably before applying to the Court for relief.

VIOLATION OF THIS CONSENT DECREE

52. A violation of this Consent Decree shall be deemed a subsequent violation of the ADA under 42 U.S.C. § 12188(b)(3); 28 C.F.R. § 36.504(b).

RESERVATION OF RIGHTS

53. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against defendants for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Consent Decree or any other provision of law. However,

subject to defendants' full compliance with the Consent Decree, the Government will not file a subsequent complaint against defendants pursuant to Title III of the ADA concerning the facilities and establishments of the Rainbow Complex covered by this Consent Decree based on the facts in existence at the time of the filing of the complaint herein, unless defendants make alterations that do not comply with Title III of the ADA.

MODIFICATION

54. There shall be no modification of this Consent Decree without the written consent of the Government, defendant Cipriani, and defendant RCPI, and the approval of the Court.

ENTIRE AGREEMENT

55. This Consent Decree represents the entire agreement between the Government and defendants. No prior agreements, oral representations or statements shall be considered part of this Consent Decree.

RETENTION OF JURISDICTION

56. The Court shall retain jurisdiction of this action to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its terms.

57. The parties shall discuss and attempt to negotiate

a resolution of any dispute relating to the interpretation of this Consent Decree before bringing the matter to the Court's attention for resolution.

EXECUTION OF CONSENT DECREE

58. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

INCORPORATION OF EXHIBITS

59. Exhibits A, B, & C to this Consent Decree are incorporated by reference into this Consent Decree and the terms set forth on those exhibits are part of this Consent Decree as though fully set forth in the Decree.

COSTS AND ATTORNEY'S FEES


60. Each party shall bear its own costs and attorney's fees in this action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

FOR THE UNITED STATES:

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for the
United States of America

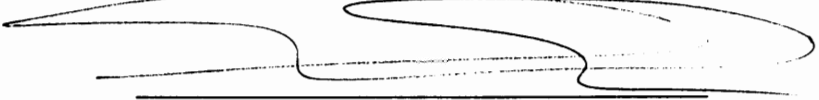
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Defendant B.E. Rock

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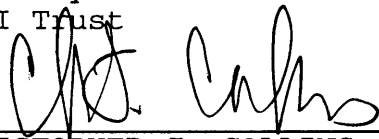
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Exhibit A

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
1	Men's Toilet Room - 66th Floor	Stairs	A handrail is provided on only one side of the stairs. The handrail, which measures 33 inches, does not extend beyond the top and bottom risers.	Install handrails complying with section 4.9.2 of the Standards on both sides of the stairs.
2		Signage	Letters on signage are not all upper case or raised and are not accompanied with Braille. Signage is mounted on the door.	Install signage complying with section 4.1.3(16)(a) of the Standards on the wall adjacent to the latch side of the door at 60 inches AFF.
3		Doors	The clear width of the doorway at 90 degrees measures 29 1/2".	Modify doorway to provide minimum clear width of at least 32 inches in accordance with section 4.13.6 of the Standards.
4		Doors	The maneuvering clearance measures 2 1/2" at the pull side of door.	Provide proper clearance by installing door that swings outward.
5		Doors	From an open position of 70 degrees, the door closes in two seconds.	Replace or adjust door closer to close at the proper rate in accordance with section 4.13.10 of the Standards.
6		Toilet Rooms	No accessible stall.	Install accessible unisex restroom on the 65th floor.
7		Toilet Rooms	Stall door measures 30 1/2" wide and swings inward.	Modify stall to conform with door opening widths and swing in accordance with section 4.13.5 of the Standards.
8		Toilet Rooms	The coat hook is mounted at 68" AFF.	Remount coat hooks to proper height in accordance with section 4.27.3 of the Standards.
9		Toilet Rooms	No grab bars are provided in stalls.	Install ADA compliant grab bars in at least one stall.
10		Urinals	Urinal rim measures 23" AFF and flush valve measures 52" AFF.	Reposition urinal to comply with the height requirements of section 4.18.2 of the Standards.
11		Toilet Rooms	Faucets controls are not operable with one hand without tight grasping. Operating force required is 10 pounds.	Replace faucet controls to conform to section 4.19.5 of the Standards. All controls and operating mechanisms shall comply with section 4.27.4 of the Standards.
12		Toilet Rooms	Existing electrical outlet is mounted out of reach.	Relocate an existing outlet within reach requirements.

Exhibit A

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
13	Men's Toilet Room - 64th Floor	Doors	From an open position of 70 degrees, the door closes in two seconds.	Adjust or replace door closer to close at the proper rate in accordance with section 4.13.10 of the Standards.
14		Doors	Force to open door is 20 pounds.	Adjust opening force in accordance with section 4.13.11 of the Standards.
15		Doors	Maneuvering clearances at pull side of door measures only 44" wide.	Modify to provide maneuvering clearance in accordance with section 4.13.6 of the Standards.
16		Signage	Letters on signage are not all upper case or raised and are not accompanied with Braille. Signage is mounted on the door.	Install signage complying with section 4.1.3(16)(a) of the Standards on the wall adjacent to the latch side of the door at 60 inches AFF.
17		Toilet Rooms	No accessible stall.	Install Standard Stall meeting specifications of Figure 30(a) of the Standards.
18		Toilet Rooms	Approach to accessible stall is 40" wide at urinal screen.	Modify urinal screens to provide 42" clear approach.
19		Toilet Rooms	Door to stall apparently intended for disabled individuals measures 30" wide.	Modify door to provide maneuvering clearance in accordance with section 4.13.5 of the Standards.
20		Toilet Rooms	Coat hook is mounted at 68" AFF.	Remount coat hooks in accessible stall at 48" AFF on side partition not above grab bar.
21		Toilet Rooms	Grab bars extend to 51" long.	Install grab bars that comply with the Standards.
22		Toilet Rooms	Height to rim of water closet measures 20" AFF.	Adjust water closet or replace to provide height between 17"-19" AFF.
23		Toilet Rooms	Water closet is too far from side wall or partition at 19 1/2".	Install Standard Stall meeting specifications of Figure 30(a) of the Standards.
25		Toilet Rooms	Clear floor space in front of urinal measures 23" x 42".	Provide clear floor space of 30" x 48" in front of accessible urinal.
26		Toilet Rooms	Height to urinal flush valve measures 52" high.	Adjust height of urinal as required by Standards. Provide flush valve at 44" AFF.
27		Toilet Rooms	Knee clearance under lavatory does not extend 8" back at 27" AFF.	Remove portion of wood apron to provide required clearance under counter.
28		Toilet Rooms	Reach to toiletries is 46" AFF, 26" back over a 33 1/2" counter.	Provide additional toiletries on counter as per 4.1.3(13).

Exhibit A

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
38	Women's Toilet Room - 65th Floor	Signage	Letters on signage are not all upper case or raised and are not accompanied with Braille. Signage is mounted on the door.	Install signage complying with section 4.1.3(16)(a) of the Standards on the wall adjacent to the latch side of the door at 60 inches AFF.
39		Visual Alarms	No visual alarm signaling devices.	Install audible and visible alarm appliances.
40		Toilet Rooms	Passage narrows at entrance and between lavatory area and toilet area to 27" clear width.	A unisex accessible restroom shall be provided on the 65th floor. Women's restroom located on 64th floor shall have one Standard Stall meeting specifications of Figure 30(a) of the Standards.
41		Toilet Rooms	No accessible stall.	Install unisex accessible restroom on the 65th floor. Install Standard Stall meeting specifications of Figure 30(a) of the Standards in 64th floor women's restroom.
42		Toilet Rooms	Stall doors are a pair of bi-swinging doors 16 3/4" wide each.	Remove one set of bi-swinging doors and replace with a single 2'10" door.
43		Toilet Rooms	Coat hook is mounted at 74 1/4" AFF.	Remount coat hook at the correct height in accordance with section 4.27.3 of the Standards.
44		Toilet Rooms	Grab bar is on one side of stall only; no rear grab bar in A stall; no parallel grab bar in B stall.	Replace or modify all grab bars to meet the requirements of sections 4.16.4, 4.17.6 and 4.26 of the Standards.
45		Toilet Rooms	Clearance between grab bar and wall is 1 3/4".	Replace or modify all grab bars to meet the requirements of sections 4.16.4, 4.17.6 and 4.26 of the Standards.
46		Toilet Rooms	Side grab bar measures 36" long.	Replace or modify all grab bars to meet the requirements of sections 4.16.4, 4.17.6 and 4.26 of the Standards.
47		Toilet Rooms	Height to rim of water closet is 16".	Adjust water closet rim height to conform to section 4.16.3 of the Standards.
48		Toilet Rooms	Knee clearance at lavatory measures only 26 3/4"; clearance at 8" depth is 23".	Install unisex accessible restroom on the 65th floor. Install accessible lavatory in 64th floor women's restroom.
49		Toilet Rooms	No insulation at under-lavatory pipes.	Cover exposed lavatory pipes with protectors by Tubro or equal.
50		Doors	Clear width at door measures only 29 1/2".	Replace existing door with a new 2' 10" door and frame.
51		Doors	Maneuvering clearance is 3 1/2" at pull side. Door hardware is not compliant.	Modify doorway either by (1) providing automatic opener on door; or (2) replacing door hardware and reversing the swing of the door to provide minimum maneuvering clearance in accordance with section 4.13.6 of the Standards.
52		Doors	Force to open door is 8 pounds.	Adjust door closer to allow proper opening force requirements and door closing speed in accordance with section 4.13.11 of the Standards.

Exhibit A

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
53	Women's Toilet Room - 64th Floor	Signage	Letters on signage are not all upper case or raised and are not accompanied with Braille. Signage is mounted on the door.	Install signage complying with section 4.1.3(16)(a) of the Standards on the wall adjacent to the latch side of the door at 60 inches AFF.
54		Doors	Maneuvering clearance on pull side of door is 8".	Remove existing counter with cabinet and provide 18" clearance at pull side.
55		Doors	Door requires 25 pounds of force to operate.	Adjust existing door as required.
56		Doors	Threshold bevel is greater than 1:2; total height 3/8"	Replace threshold with new saddle flush to finished floor.
57		Toilet Rooms	No accessible stall.	Install Standard Stall meeting specifications of Figure 30(a) of the Standards.
58		Toilet Rooms	Coat hook is mounted too high at 67".	Remount coat hook in accessible stall at 48" AFF on side partition not above grab bar.
59		Toilet Rooms	Clearance between grab bar and wall/partition is 1 3/4".	Replace or modify all grab bars to meet the requirements of sections 4.16.4, 4.17.6 and 4.26 of the Standards.
60		Toilet Rooms	Grab bars do not extend to 52" from rear wall.	Replace or modify all grab bars to meet the requirements of sections 4.16.4, 4.17.6 and 4.26 of the Standards.
61		Toilet Rooms	Water closet is 13 1/2" from side wall and too high at 20" AFF.	Provide water closet in accessible stall at 17" to 19" AFF.
62		Toilet Rooms	Knee clearance under lavatory does not extend 8" back at 27" AFF.	Remove portion of wood apron to provide proper leg clearance 29" AFF.

Exhibit A

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
63	Performers' Dressing Room/New Unisex Restroom	Signage	Letters on signage are not all upper case or raised and are not accompanied with Braille. Signage is mounted on the door.	Install signage complying with section 4.1.3(16)(a) of the Standards on the wall adjacent to the latch side of the door at 60 inches AFF.
64		Toilet Rooms	No 60" diameter turning space or T-turn provided. Clear floor space at (non-stall) water closet is non-compliant at 48" x 67".	Remove existing partitions to provide proper clearances.
65		Toilet Rooms	Coat hook mounted too high at 68" & 77".	Remount coat hooks at 48" AFF.
66		Toilet Rooms	Grab bar is provided on only one side of water closet.	Install 36" rear grab bar in accordance with the Standards.
67		Toilet Rooms	Height to top of water closet seat is 16 1/2".	Adjust water closet to proper height of 17" AFF.
68		Toilet Rooms	Centerline of water closet to side wall or partition is 19". Flushing mechanism is on narrow side of toilet.	Modify to provide proper distance. Mount controls for flush valves on wide side of toilet.
69		Toilet Rooms	Insufficient knee clearance at lavatory.	Adjust apron to provide clearance of 29".
70		Toilet Rooms	No insulation at under-lavatory pipes.	Provide lavatory guards by Trubro or equal.
71		Doors	Clear width of door measures only 29 1/8".	Widen opening to provide 32" clear width.
72		Doors	Maneuvering clearance at pull side of door is 5" to wall.	Modify to provide maneuvering clearance at pull side in accordance with the Standards.
73		Doors	Threshold bevel is greater than 1:2; total height measures 3/8".	Replace existing saddle with new flush to FF.
74		Doors	Operating force at deadbolt is 15 to 20 lbf.	Adjust operating force at deadbolt for 5 pounds.
75		Doors	Height to sliding lock measures 51".	Remove stall.

Exhibit B

EXHIBIT B

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
1	Elevator Lobby - Ground Floor	Call Buttons	Existing hall call button is mounted at 52 inches AFF to centerline.	New call button keypad will be centered at 42 inches above the floor in accordance with section 4.10.3 of the Standards.
2		Hoistway Entrances	Floor designations (8) at elevator hoistway are located on only one jamb of the hoistway opening.	Provide raised letter and Braille floor designations on both jambs of all elevator hoistway entrances in accordance with section 4.10.5 of the Standards.
3		Hoistway Entrances	Characters and symbols do not contrast with their background.	Replace all existing raised letter and Braille floor jamb identifications with new floor jamb identifications where characters and symbols contrast with background.
4	Elevator Lobby - 65th Floor	Call Buttons	Existing hall call buttons (2) are mounted at 47.5 inches AFF to centerline.	Remount all call buttons to be centered at 42 inches above the floor in accordance with section 4.10.3 of the Standards.
5		Hoistway Entrances	Floor designations (8) at elevator hoistway are located on only one jamb of the hoistway opening.	Provide raised letter and Braille floor designations on both jambs of all elevator hoistway entrances in accordance with section 4.10.5 of the Standards.
6		Hoistway Entrances	Characters and symbols (8) do not contrast with their background.	Replace all existing raised letter and Braille floor jamb identifications with new floor jamb identifications where characters and symbols contrast with background.
7	Elevator Lobby - 64th Floor	Call Buttons	Existing hall call buttons (2) are mounted at 46.5 to 47 inches AFF to centerline.	Remount all call buttons to be centered at 42 inches above the floor in accordance with section 4.10.3 of the Standards.
8		Call Buttons	Ash trays (2) located below call buttons protrude more than 4 inches.	Remove or relocate ashtrays to comply with section 4.10.3 of the Standards.
9		Hoistway Entrances	Floor designations (8) at elevator hoistway are located on only one jamb of the hoistway opening.	Provide raised letter and Braille floor designations on both jambs of all elevator hoistway entrances in accordance with section 4.10.5 of the Standards.
10		Hoistway Entrances	Characters and symbols (8) do not contrast with their background.	Replace all existing raised letter and Braille floor jamb identifications with new floor jamb identifications where characters and symbols contrast with background.
11	All Elevators Serving Rainbow	Car Controls	Existing control panels have call buttons higher than 54 inches AFF, no raised letter and Braille, and buttons are recessed.	Remove at least existing control panel in each elevator serving the Rainbow Complex and replace with control panels that comply with section 4.10.12 of the Standards.
12	Elevators B & D	Hall Lanterns	No hall lantern visual signals or signals do not comply with section 4.10.4 of the Standards.	Install new hall lanterns for all elevators serving the Rainbow Complex in accordance with section 4.10.4 of the Standards.

EXHIBIT B

Item #	Location	Issue	Barrier Description	Consent Decree Requirement
13	Elevators A, B, F & H	Elevator Cars	Characters and symbols do not contrast with their background.	Replace existing raised letter and Braille tags in all elevators serving the Rainbow Complex with new tags where the characters and symbols contrast with their background.
14	Elevators A, C & F	Elevator Doors	Elevator doors remain fully open for less than three seconds.	Adjust door closer delay in accordance with sections 4.10.7 and 4.10.8 of the Standards.
15	Elevator A	Elevator Cars	The clearance between the car platform sill and the edge of hoistway landing is greater than 1.25 inches.	Install new sill or extension to reduce clearance to 1.25 inches or less. Verify proper operation.
16	Elevators B, C, D, F & H	Car Position Indicators	Existing car position indicators do not sound an audible signal when passing floors.	Car position indicators in all elevators serving the Rainbow Complex will comply with section 4.10.13 of the Standards.
17	Elevators C & D	Emergency Comm.	Existing emergency communication equipment requires voice communication.	Provide emergency intercommunication system that complies with section 4.10.14 of the Standards in all elevators serving the Rainbow Complex.
18	Elevators A & G	Elevator Doors	The time delay between notification of elevator car arrival and start of door closing is less than 5 seconds or is not sufficient to allow for travel from farthest hall call button to the doorway at a speed of 1.5 feet per second.	Adjust door closing delay for all elevators serving the Rainbow Complex to comply with sections 4.10.7 and 4.10.8 of the Standards.

Exhibit C